17

FILED
JUN 6 1952
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1951
No. [redacted] 62

ROBERT B. OLSEN,

Petitioner,

against

ARABIAN AMERICAN OIL COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LOUIS F. HUTTENLOCHER,
Attorney for Respondent,
Office and Post Office Address,
Thirty-six West Forty-fourth Street,
New York 36, New York.

THOMAS F. BARRY,
of Counsel.

SUPREME PRINTING CO., INC., 41 MURRAY STREET, N. Y., BARCLAY 7-0349
49

INDEX

PAGE

Statement of Facts 1

Points and Authorities 2

POINT I—The decision of the Court of Appeals was correct 2

POINT II—The decision below turns on its own facts; would affect but few persons and would be binding only on the parties hereto 4

Conclusion 4

Table of Cases Cited

Armstrong v. Standard Ice Co., 129 Pa. Super. 207, 210, 211, 213 3

Couture v. Hebert (1945) 93 N. H. 378 3

Dineen v. May, 149 App. Div. 469 3

Egbert v. Sun Co., 126 Fed. 568 3

Ellis v. Fruchtman and Griesdorf, 5 Alberta Law 456.. 3

Hecht v. Brandus, 4 Misc. 58 3

Laskey v. Rubel Corp., 277 App. Div. 1119, 303 N. Y. 69 3

Reiss v. Arabian American Oil Company, 279 App. Div. 805, 109 N. Y. S. 2d 625 2

Teichner v. Pope Mfg. Co. (1900) 125 Mich. 91 3

Twentieth Century-Fox Film Corp. v. Screen Publicists' Guild (Sup. Ct., Spec. Term, New York County) 78 N. Y. S. (2) 178 3

Supreme Court of the United States

October Term, 1951

No.

ROBERT B. OLSEN,

Petitioner,

against

ARABIAN AMERICAN OIL COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

May it please the Court:

The respondent opposes the petition for writ of certiorari on the following grounds:

Statement of Facts

The action is for wrongful discharge.

The Plaintiff was employed by the Defendant under a written contract as an airplane pilot.

The written contract contained clauses as follows:

> "a. You will be summarily dismissed, without notice and without return transportation and traveling expenses, for conduct which, in the opinion of the Management, would be detrimental to the best interests of the Company, for wilful neglect of duties, or for noncompliance with regulations;

> "b. The Company may terminate your services for any other reason after departure from the continental United States upon payment of minimum return transportation and traveling expenses, salary for normal travel time to place of recruitment, and upon payment of a sum equivalent to a minimum of four weeks' basic salary."

The employment was terminated by the Defendant pursuant to clause (b) and the payments required to be made by the Defendant to the Plaintiff by clause (b) were made in full.

The Defendant moved in the District Court for summary judgment and the motion was granted. The Plaintiff appealed to the Court of Appeals, Second Circuit and the order of the District Court was affirmed. The Plaintiff made a petition to the Court of Appeals for a rehearing, and the petition was denied.

No question of fact is involved.

No statute, either state or federal is involved.

POINTS AND AUTHORITIES

POINT I

The decision of the Court of Appeals was correct.

The New York Appellate Division, Second Department in *Reiss* v. *Arabian American Oil Company*, 279 App. Div. 805, 109 N. Y. S. 2d 625 (appeal to the New York Court of Appeals still pending) has interpreted the identical form of contract herein involved, in favor of the Defendant.

As pointed out in the brief of the Defendant to the Court of Appeals, Second Circuit, the words "for any

other reason" in clause (b) of the contract, refer to a reason subjective to the Defendant alone.

Teichner v. *Pope Mfg. Co.* (1900) 125 Mich. 91.

Clause (b) gives the Defendant the right to terminate the contract for a price.

Couture v. *Hebert* (1945) 93 N. H. 378;
Twentieth Century-Fox Film Corp. v. *Screen Publicists' Guild* (Sup. Ct., Spec. Term, New York County) 78 N. Y. S. (2) 178;
Hecht v. *Brandus*, 4 Misc. 58;
Armstrong v. *Standard Ice Co.*, 129 Pa. Super. 207;
Ellis v. *Fruchtman and Griesdorf*, 5 Alberta Law 456;
Laskey v. *Rubel Corp.*, 277 App. Div. 1119, 303 N. Y. 69;
Dineen v. *May*, 149 App. Div. 469.

The Plaintiff by accepting the payments provided to be made in clause (b) acquiesced in the discharge. He cannot in addition to the payments made to him in clause (b) recover what he would have earned if not discharged.

Armstrong v. *Standard Ice Co.*, 129 Pa. Super. 207, 210, 211, 213;
Egbert v. *Sun Co.*, 126 Fed. 568.

POINT II

The decision below turns on its own facts; would affect but few persons and would be binding only on the parties hereto.

The facts involved in the case at bar are special and peculiar to the case itself. While there are other reported cases similar to the case at bar, the case does not present a common or ordinary situation. A decision from this Court could not, therefore, be of any great value as a rule and guide for the future. As a result one could safely say that the decision of this Court would affect few persons other than the litigants themselves.

The question invoved is one of contract law, the decision of which by this Court, while it would be binding on the parties hereto, would not be binding on the courts of New York or on the courts of any other state.

CONCLUSION

The petition for writ of certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

Louis F. Huttenlocher,
Attorney for Respondent,
Office and Post Office Address,
Thirty-six West Forty-fourth Street,
New York 36, New York.

Thomas F. Barry,
of Counsel.